



FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 26, 1999

Peter Roskam
Roskam for Congress Committee
1919 Briarcliffe Blvd.
Wheaton, IL 60187

RE: MUR 4728

Dear Mr. Roskam:

On March 18, 1998, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") by you and Roskam for Congress Committee and Carl A. Lofgren, as treasurer. A copy of the complaint was forwarded to you at that time.

On January 12, 1999, the Commission found, on the basis of the information in the complaint, and information provided by your client, that there is no reason to believe that you or Roskam for Congress Committee and Carl A. Lofgren, as treasurer, violated the Act on the basis of the complaint in this matter. Accordingly, the Commission closed its file in this matter as it pertains to you and Rokam for Congress Committee. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

This matter will become part of the public record within 30 days after it has been closed with respect to all other respondents involved. The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Seth H. Row, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Lawrence M. Noble
General Counsel

Lois M. Lerner
by AAS

By: Lois G. Lerner
Associate General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Roskam for Congress MUR: 4728
 Committee and Carl F.
 Lofgren as Treasurer
 Peter Roskam

This matter was generated based on a complaint filed with the Federal Election Commission ("The Commission") by Kevin Arlt. See 2 U.S.C. § 437g(a)(2).

I. Complaint and Responses

The complaint alleges that Campaign for Working Families, ("CWF") and Gary L. Bauer, Chairman of CWF, failed to report the cost of two mailings, produced by CWF in support of Peter Roskam's campaign for the Republican nomination to the House of Representatives from the 13th District of Illinois, as an independent expenditure within 24 hours, in violation of 2 U.S.C. § 434(c)(2) and 11 C.F.R. § 104.4(c)(1). Complainant alleges, alternatively, that these expenditures were last-minute in-kind contributions to the Roskam for Congress Committee, ("the Committee") because both mailings expressly advocated the defeat of Judy Biggert and the election of Roskam and failed to mention any of the other candidates in the Republican primary. Complainant alleges that if the mailings were contributions, because these contributions were made within 20 days of the election, and the Committee did not report them within 48 hours, the Committee violated 11 C.F.R. § 104.5(f). Complainant also alleges that the cost of the two mailings exceeded the limit of \$5,000 on CWF's permissible contributions to the Committee, in violation of 2 U.S.C. § 441a(a)(2), and that the Committee violated 2 U.S.C. § 441a(f) by accepting these contributions.

Peter Roskam submitted a response for himself and his campaign committee, in which he denies receiving any in-kind contributions from CWF.

II. Law

A. Independent Expenditures

The Federal Election Campaign Act of 1971, as amended ("the Act"), defines an independent expenditure as an expenditure for a communication, such as a direct mail advertisement, that expressly advocates the election or defeat of a clearly identified candidate and is not made in coordination, consultation with or at the direction of a candidate, a candidate's agent, or a candidate's committee. 2 U.S.C. § 431(17); 11 C.F.R. § 109.1(a). A candidate is "clearly identified" if, among other things, the candidate's name appears in the communication. 11 C.F.R. § 109.1(b)(3). A communication "expressly advocates" for a candidate *if the communication calls for the election or defeat of the candidate using certain terms.* 11 C.F.R. § 100.22(a). Phrases such as "Vote for" preceding the candidate's name create express advocacy for the candidate in the communication.¹ Id.

1. **Reporting requirements for last-minute independent expenditures**

Independent expenditures by a political committee over \$1,000, made within twenty days of an election but more than 24 hours before the election, must be reported to the Commission within 24 hours of the expenditure being made. 2 U.S.C. § 434(c)(2);

¹ The Commission's definition of express advocacy also includes a standard which is contained in 11 C.F.R. § 100.22(b). This portion of the regulations, which has been held unconstitutional by the First Circuit, Maine Right to Life Comm., Inc. v. FEC, 98 F.3d 1 (1st Cir. 1996), cert. denied, 118 S. Ct. 52 (1997), and implicitly rejected by the

11 C.F.R. § 104.4(b); 11 C.F.R. § 104.5(g). The 24 hour requirement is triggered when a contract with a vendor to make expenditures is made, not when the services or materials are received or when the services or materials are paid for. 11 C.F.R. § 100.8(a)(2) ("A written contract, including a media contract... to make an expenditure is an expenditure as of the date such contract, promise, or obligation is made."). The 24 hour report must contain, among other things, a statement which indicates whether the expenditure was made in support of or in opposition to a candidate, and a notarized certification under penalty of perjury as to whether such expenditure was made in cooperation, consultation or concert with, or at the request or suggestion of any candidate or their authorized committee or agent. 11 C.F.R. § 104.3(b)(3)(vii).

In addition to reporting last-minute expenditures within 24 hours, a political committee must report such independent expenditures again, on a Schedule E form filed with its next scheduled report. 11 C.F.R. § 104.4(a).

2. Disclaimers

Every public political advertisement containing express advocacy purchased by a nonconnected political committee must contain a disclaimer notice identifying who paid for the advertisement. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(1). In the case of advertisements not authorized by a candidate or a candidate's committee, the disclaimer must identify the committee that paid for the advertisement and state that it was not authorized by the candidate or the candidate's committee. 2 U.S.C. § 441d(a)(3).

B. Contributions in the Form of Expenditures

Fourth Circuit, FEC v. Christian Action Network, Inc., 110 F.3d 1049 (4th Cir. 1997), is not at issue in this case.

According to the Act, coordinated expenditures - i.e. those made after consultation or coordination with candidates - are deemed to be contributions, rather than independent expenditures. 2 U.S.C. § 441a(a)(7)(B)(i) (“[E]xpenditures made by any person in cooperation, consultation or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered a contribution to such candidate.”). In regulations, the Commission has explained that the Act’s definition of what will be considered a contribution includes any expenditure made with “[a]ny arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display or broadcast of the communication.” 11 C.F.R. § 109.1(b)(4).

I. Disclosure of last-minute contributions

The Act requires the principal campaign committee of a candidate for the House to notify the Commission in writing of any contribution of \$1,000 or more received by any authorized committee of such candidate after the twentieth day, but more than 48 hours before, any election. 2 U.S.C. § 434(a)(6)(A); 11 C.F.R. § 104.5(f). Notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate, the office sought by the candidate, the identification of the contributor, the date of the receipt, and amount of the contribution. Id. This required notification is in addition to all other reporting requirements under the Act. 2 U.S.C. § 434(a)(6)(B).

2. Limits on contributions

The Act limits to \$5,000 the amount that a qualified multicandidate committee may contribute to a candidate or their authorized committee.² 2 U.S.C. § 441a(a)(2)(A).

The Act further provides that a candidate may not knowingly accept, and a political committee may not knowingly make, an excessive contribution in violation of the provisions of the Act. 2 U.S.C. § 441a(f).

III. Analysis

Mailings Do Not Appear to Be In-Kind Contributions to the Committee

Implicit in Complainant's argument that the expenditures may have constituted in-kind contributions to the Committee is an assertion that CWF's mailings may have been coordinated with Mr. Roskam or his authorized campaign committee. Complainant presents no evidence of any such coordination. Instead, Complainant attempts to infer coordination with the Roskam Committee from the fact that the mailings advocated the election of Roskam and the defeat of Biggert and did not mention any of the other candidates in the Republican primary. Roskam for Congress denies that any coordination took place.

The Commission does not agree that the contents of the mailings alone provides a sufficient basis for a conclusion that there is reason to believe that the mailings were coordinated. Based on the absence of any evidence that coordination took place between CWF and the Committee, and on Respondents' denials that there was any coordination,

² A multicandidate committee is a committee which has been registered with the Commission for at least six months, has received contributions from more than 50 persons, and has made contributions to five or more candidates for federal office. 2 U.S.C. § 441a(a)(4). CWF is a qualified multicandidate committee.

the Commission finds no reason to believe that Roskam for Congress Committee and Carl F. Lofgren, as treasurer, violated 2 U.S.C. § 434(a)(6)(A) or 2 U.S.C. § 441a(f).